

**STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2018-364-WS**

Stephen and Beverly Noller and)
Michael and Nancy Halwig,)
)
Complainants,)
)
v.)
)
Daufuskie Island Utility Co., Inc.,)
)
Respondent.)
_____)

**COMPLAINANTS' PETITION FOR
REHEARING OR RECONSIDERATION**

Pursuant to S.C. Code Ann. § 58-5-330 and S.C. Code Ann. Regs. 103-825 and 103-854, and applicable South Carolina law, Complainants Stephen and Beverly Noller and Michael and Nancy Halwig ("Complainants" or "Homeowners") hereby respectfully petition the Public Service Commission of South Carolina ("Commission") to reconsider its findings and conclusions in Order No. 2019-424 ("Order").

On June 12, 2019, the Commission issued the Order dismissing the Complaint in this matter determining as the sole basis for dismissal that the Commission does not have statutory authority to grant monetary damages in favor of Homeowners in their Complaint against Daufuskie Island Utility Co., Inc. ("DIUC"). The Order also stayed any disconnection of service for the Homeowners while contractual disputes are pending based on its jurisdiction over service-connection and termination issues.

Complainants ask the Commission to reconsider this matter as follows:

1. This Commission has jurisdiction over this matter, because DIUC has failed to provide adequate and proper water and sewer service to Homeowners.

Ensuring that utilities provide adequate and proper water and sewer service to customers is the most basic of reasons that the Commission has jurisdiction over this matter. The Commission's regulations (S.C. Code Reg. 103-540, 103-740 and 103-555) require the provision of service. DIUC refused to provide the infrastructure necessary to serve Homeowners' homes after a storm damaged its water and sewer mains. DIUC then forced the homeowners to provide their own infrastructure and donate that infrastructure to DIUC. Even after the Homeowners installed the infrastructure that DIUC should have provided, DIUC continued to withhold service. DIUC insisted that Homeowners agree to pay taxes and attorney fees to DIUC before DIUC would restore service. DIUC continued to withhold service until after Homeowners filed their Complaint. DIUC failed to provide service for over two (2) years while it required Homeowners to install the means to provide services and demanded that Homeowners pay taxes and attorney fees as a condition of service.

The provision of adequate and proper water and sewer services by a utility is squarely within the Commission's jurisdiction. As noted in the Order the Commission has jurisdiction over service connections and ordered that no disconnection of service result during the contractual dispute. The Commission has the authority to require DIUC to provide the service connection and not allow DIUC to require the Homeowners to provide it.

2. The Commission has jurisdiction to hear this matter in order to remedy the failure of DIUC to submit the Customer Service Agreement for approval before it was forced onto Homeowners.

The Commission has jurisdiction over this matter, because DIUC has attempted to circumvent the Commission's authority over rates by charging the individual homeowner Complainants the costs of installation of replacement facilities and equipment now owned by the utility and other costs outside of its approved rates without Commission approval.

The Commission should have reviewed the Customer Service Agreement for approval or disapproval prior to execution. S.C. Code Reg. 103-541 and 103-743. S.C. Code Reg. 103-541 provides as follows:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, State or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide sewerage service, including but not limited to the collection or treatment of said wastewater, without first submitting said contract in form to the commission and the **ORS and obtaining approval of the commission.**

(emphasis added). S.C. Code Reg. 103-743 provides as follows:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, state, or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide water service, including but not limited to the treatment of said water, without first submitting said contract in form to the commission and the **ORS and obtaining approval of the commission.**

(emphasis added).

DIUC never asked for approval of the Commission and only submitted it to ORS after the Agreement was executed and after the Homeowners' installation of infrastructure was complete.¹ DIUC's failure to submit the Customer Service Agreement for approval prior to its execution to ORS and the Commission violates these state regulations for contract approval and shows DIUC's efforts to circumvent the rate setting authority of the Commission. The Customer Service Agreement is in violation of state regulation and public policy. *See, e.g., White v JM Brown Amusement*, 360 SC 366, 601 SE2d 342 (2004).

¹ See Testimony of Michael J. Guastella, Vice President of Operators for Guastella Associates, Inc., which provides utility rate, valuation and management consulting services to DIUC, dated February 6, 2019, at 20:1-22:2; see also Letter from ORS to Dr. John Halwig dated December 2, 2016, Complainants 00053-54, in which ORS confirmed that it informed DIUC of the applicable PSC regulations concerning its responsibilities.

The Commission has jurisdiction in this matter as provided by its own regulations. To avoid jurisdiction here is to say that the Commission does not have authority under S.C. Code Reg. 103-541 and 103-743.

The Commission also has jurisdiction here through its authority to set utility rates. DIUC charged the Homeowners the costs of installation of replacement facilities and equipment and required them to transfer ownership of such facilities and equipment to DIUC in order to provide service. The Commission's jurisdiction includes authority over a utility that circumvents the usual rate making process in a manner such as DIUC has imposed on Homeowners in the same manner that the Commission has authority over rates in the usual rate making process.

3. The Commission has authority to provide monetary remedies to Complainants.

S.C. Code Ann. § 58-5-270 and §58-5-710 both also provide for jurisdiction in this matter. The Commission has not only the explicit authority provided in the statutes and regulations but also the implicit authority needed to carry out those responsibilities. *See Hamm v. Central States Health and Life Co. of Omaha*, 299 S.C. 500, 386 S.E.2d 250 (1989)(holding in favor of the implied power to issue refunds). In the *Hamm* decision, the South Carolina Supreme Court distinguished its prior decision in *South Carolina Electric & Gas Co. v. Public Service Comm'n*, 275 S.C. 487, 272 S.E.2d 793 (1980), in which it held that the Commission did not have the authority to issue refunds **in accordance with past-approved lawful rates**. 386 S.E.2d at 253 (emphasis added). As set forth above, the Commission did not approve the Agreement and the fees and costs required by DIUC of the Homeowners were thus not lawful fees and costs. Further, the Commission stated that based its Order on a lack of jurisdiction to grant monetary damages, while the Petition requested that Homeowners be "reimbursed" by DIUC.

Even if upon reconsideration the Commission determines that it does not have authority to order monetary relief, the Commission should take jurisdiction based on 1) its authority to ensure that a utility provide adequate and proper service to its customers, 2) the requirement that a utility present such a contract to the Commission for approval prior to its execution, and 3) its rate making regulatory authority. Courts and administrative authorities hear and decide matters without granting all relief requested in many instances. The Complaint requested that the Commission require that “DIUC restore water and sewer service to its customers Halwig and Noller immediately and that DIUC reimburse the Halwigs and the Nollers for all costs paid to replace the mains serving the portion of Driftwood Cottage Lane above the road wash out *and for such other and further relief as the PSC may deem just and proper.*” (emphasis added)

Here water and sewer service have now been restored, and that service is temporarily protected by the Commission’s Order. As set forth above, Homeowners request monetary reimbursement by DIUC and believe that the Commission has the jurisdiction and authority to require such relief. However, even if upon reconsideration the Commission determines that it does not, the Commission should still assert its clear jurisdiction in this matter for all of the reasons set forth above and find that DIUC did not comply with Commission regulations in failing to submit the agreement to the Commission and requiring Homeowners to sign the unapproved agreement to fund the replacement lines to enable service to be restored.

CONCLUSION

The facts of this matter provide jurisdiction to the Commission for DIUC’s failure to provide adequate and proper service to its customers, its charging of customers of cost of installation, its failure to submit the agreement to the Commission for approval prior to its execution, and DIUC’s attempt to circumvent the Commission’s rate approval authority. To

deny jurisdiction in this matter is to say that the Commission does not have authority over a utility's obligation to provide adequate and proper service to its customers, to enforce its regulation that requires approval of an agreement that restores a utility's ability to provide service prior to its execution, or over the costs and rates charged by a utility to its customers.

For all of the reasons set forth above and in Complainants' prior pleadings and briefs, Complainants request that this Commission acknowledge its jurisdiction in this matter and schedule the hearing on the merits as soon as possible.

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